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Federal Communications Commission

DA 97-297

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Clayton and Jena, Louisiana)

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MM Docket No. 97-59
RM-8976

**NOTICE OF PROPOSED RULE MAKING
AND ORDER TO SHOW CAUSE**

Adopted: February 7, 1997

Released: February 14, 1997

Comment Date: April 7, 1997
Reply Comment Date: April 22, 1997

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Clayton FM Partnership ("petitioner"), permittee of Channel 300A, Clayton, Louisiana, requesting the substitution of Channel 257A for Channel 300A at Clayton, Louisiana. In order to accommodate the channel change at Clayton, petitioner also requests the substitution of Channel 274A for Channel 257A at Jena, Louisiana, and the modification of Station KJNA(FM)'s license accordingly. Petitioner states that it will reimburse the licensee of Station KJNA(FM) for the reasonable expenses connected with the change in channel at Jena.

2. In support of its proposal, petitioner states the adoption of the channel substitutions will permit greater service to the people in southern Louisiana by allowing Station KPEL-FM, Erath, Louisiana, to build its CI facility at a much improved location. The new site would permit Station KPEL-FM to serve an additional 342,311 persons. Petitioner submits that the channel changes can be accomplished without any loss of proposed service to the people in Clayton or Jena or the need to change transmitter locations.

3. We believe petitioner's proposal warrants consideration since it could permit

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Station KPEL-FM to change its location enabling it to improve its service to the public.¹ Channel 257A and Channel 274A can be allotted to Clayton and Jena, respectively, in compliance with the Commission's minimum distance separation requirements. Channel 257A can be allotted Clayton at the transmitter site specified in the petitioner's construction permit for a new station at Clayton.² Channel 274A can be allotted to Jena and can be used at the site specified in Station KJNA(FM)'s license and permit Station KJNA(FM) to increase its operating power to six kilowatts.³ In consideration of this proposal, we will direct an Order to Show Cause to the licensee of Station KJNA(FM) why its license should not be modified to specify operation on Channel 274A in lieu of Channel 257A. Petitioner will be required to reimburse the licensee of Station KJNA(FM) for the reasonable costs of moving to Channel 257A if this proposal is ultimately adopted.

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Clayton, Louisiana	300A	257A
Jena, Louisiana	257A	274A

5. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Little River Radio Company, licensee of Station KJNA-FM, Jena, Louisiana, SHALL SHOW CAUSE why its license SHOULD NOT BE MODIFIED to specify operation on Channel 274A as proposed herein instead of the present Channel 274A.

6. Pursuant to Section 1.87 of the Commission's Rules, Little River Radio Company, may, not later than April 7, 1997, file a written statement showing with particularity why its license should not be modified as proposed in the Order to Show Cause. The Commission may call on Little River Radio Company to furnish additional information. If Little River

¹ Channel 300C1 can be allotted to Erath in accordance with the Commission's spacing requirement with a site restriction of 29.9 kilometers (18.6 miles) east. The coordinates for Channel 300C1 at Erath are North Latitude 29-59-38 and West Longitude 91-43-45.

² The coordinates for Channel 257A at Clayton are North Latitude 31-46-05 and West Longitude 91-34-39.

³ The coordinates for Channel 274A at Jena are North Latitude 31-41-51 and West Longitude 92-05-43.

Radio Company raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Little River Radio Company will be deemed to have consented to the modification as proposed in the Order to Show Cause and a final Order will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

7. IT IS FURTHER ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this Notice of Proposed Rule Making and Order to Show Cause to the licensee of Station KJNA-FM, Little River Radio Company, P.O. Box 1319, Columbia, Louisiana, 71418.

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before April 7, 1997, and reply comments on or before April 22, 1997, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Vincent J. Curtis, Jr.
Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th Street, 11th Floor
Rosslyn, Virginia 22209
(Counsel for petitioner)

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202)418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review

by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement.

Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be

accompanied by a certificate of service. (~~See~~ Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.